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the Sharswood Prize in 1885, for the best essay by a member of the graduating class.

From 1892 until 1896 he served as Assistant United States Attorney for the Eastern District of Pennsylvania. In 1901 he was elevated to the Bench, and from that time until his death served the Commonwealth with distinction. He was for years interested in the scientific development of the law and was largely instrumental in the passage of the recent Practice Act of 1915. He was an earnest student of criminal law and procedure and in 1915 served as President of the American Institute of Criminal Law and Criminology.

Since 1907 Judge Ralston delivered lectures each year in the Law School on the Trial of Criminal Causes, which were attended by a large number of students. He was a frequent contributor to the LAW REVIEW and was ever willing and anxious to give to others the benefit of his suggestions and advice. His loss will be keenly felt, not alone by those who knew him personally, but as well by all who have an interest in the welfare of the Law School.

CONFLICT OF LAWS—EXTRA-TERRITORIAL EFFECT OF FOREIGN JUDGMENTS—There is a mass of decisions on the subject of foreign judgments, but it is surprising to learn how few, from the point of view of international law, touch upon the interesting and unique question decided in the recent English case of *Harris* v. *Taylor*.[1]

The problem presented was: Does a non-resident served with process outside the jurisdiction, by entering a conditional appearance, thereby submit to the jurisdiction and law of the court out of which the process issues for all purposes, when the law of that forum considers a conditional appearance as conferring jurisdiction over the person?

The plaintiff brought an action in the Isle of Man against the defendant, a domiciled Englishman, claiming damages for criminal conversation with the plaintiff's wife. Service was obtained in England. The defendant then caused a conditional appearance to be entered to set aside the writ for lack of proper service. This contention was overruled and the writ adjudged to have been duly served. A judgment was subsequently obtained, the defendant not having further answered nor appeared in the proceedings. This judgment was then sought to be enforced in England. It was held by the English Court of Appeals that the defendant by entering an appearance had submitted to the jurisdiction of the Isle of Man since by that law such an appearance was converted into a general appearance. The defendant was bound thereby and the judgment subsequently rendered was valid and would be enforced in England.

It is fundamental that in order that effect may be given abroad

[1] 113 L. T. 221 (Eng. 1915).

to a judgment, the court rendering it must have the requisite jurisdiction. If the judgment or decree be *in rem*, it is only necessary that the *res* be within the jurisdiction and that a general publication of notice of the suit be given. If *in personam*, it is essential that the court should have obtained jurisdiction of the defendant's person, either by his voluntary appearance and submission, or by personal service of process upon him within the territorial limits of the court's authority.[2] No court can lawfully adjudge rights of persons or property in the absence of such jurisdiction. At least such judgments will not be given extra-territorial effect.[3] This principle is firmly established in the English law.[4]

Nothing is more clear, therefore, than that the service of process in the case under discussion was insufficient. Was there a voluntary appearance and submission to the court's jurisdiction? It is submitted that there was. It is perfectly obvious that if the defendant had done nothing at all in the matter, after having been so served, any judgment obtained against him would have been a mere nullity in another jurisdiction, but instead of this he entered a conditional appearance and contested the jurisdiction of the court.[5] He thereby became bound by the law of the Isle of Man, which converted a conditional appearance into a general appearance. He placed himself in such a position that it became his duty to obey the judgment of the foreign court, which judgment is enforceable against him in any country where it is sought to be enforced.

Of course, it is not contended that a state can by a statute give jurisdiction to its courts over a citizen of another state who has not been served with process within the jurisdiction and who does not appear in the action. At least a judgment rendered pursuant to such a statute, upon substituted service, would be void in every other jurisdiction. The theory is, however, that when the defendant chooses to appear, when not bound to do so, he becomes subject to the consequences of the statute. The only argument to the contrary would seem to be that in the absence of such a statute,

[2] For the historical development and a résumé of the enforcement of foreign judgments, see Wharton, Conflict of Laws, pp. 518-539.

[3] Such judgments are not protected by the Constitution of the United States from attack for want of jurisdiction in another forum. Thompson v. Whitman, 18 Wall. 461 (U. S. 1873).

[4] Schibsby v. Westenholz, L. R. 6 Q. B. 155 (Eng. 1870); Voinet v. Barrett, 55 L. J. Q. Div. 39 (Eng. 1885).

[5] The appearance was not for the purpose of protecting property in the Isle of Man, in which case different considerations might have arisen. It is settled in England that, while an appearance by the defendant in a court of a foreign country for the purpose of protecting his property already in the possession of that court, may not be deemed a voluntary appearance, yet an appearance solely for the purpose of protecting other property in that country from seizure is considered as a voluntary appearance. De Cosse Brissac v. Rathbone, 6 H. and M. 301 (Eng. 1860); Schibsby v. Westenholz, *supra*; Voinet v. Barrett, *supra*, note 4.

such an appearance is not considered a voluntary submission to the jurisdiction, and, therefore, the mere presence of such a statute cannot alter the character of the appearance from the defendant's point of view. This might be answered by the contention that even in the absence of such a statute the conditional appearance is in fact a voluntary submission, though not considered as such by the courts, which do not attach to it the consequences imposed by the statute. Whether this be an answer or not, however, the fact remains that that theory has had little weight with the courts.

There are comparatively few cases in the United States which touch upon the problem involved. The Supreme Court of the United States failed to decide the question in the case of *York* v. *Texas*.[6] But there is one case, not referred to by the English court, which apparently raises the same kind of question, and the reasoning and opinion of the court applies with great force to the problem presented.[7] A statute of the State of Texas authorized service on a non-resident outside the limits of the state. By this same statute the filing of an answer was constituted an appearance of the defendant. The defendant, a non-resident, was served outside the state, but proceeded to file an answer, in which he first set up the lack of jurisdiction and then proceeded to answer the demand. His contention as to lack of jurisdiction of his person was overruled and judgment was subsequently rendered against him. The validity of this judgment was thereafter questioned in New York, where the defendant resisted, on the ground that the Texas court had never acquired jurisdiction, and that his special appearance, although coupled with an answer, did not preclude him from raising the question of jurisdiction at any subsequent time.[8] The court in its opinion, after admitting the defendant's contention in the absence of statute, said, "We think the judgment of the Texas court became, and is a binding adjudication on the defendant herein, for the reason that the defendant, by filing an answer, became bound by the statute law of the state." He was, therefore, bound by the consequences which the statute affixed to such a proceeding.

[6] 137 U. S. 15 (1890). The case does not raise the question as to the effect to be given a foreign judgment since it was not sought to be enforced in another jurisdiction.

[7] Jones v. Jones, 108 N. Y. 415 (1888).

[8] In the absence of a statute such as existed in Texas, there are many decisions to the effect that a party not properly served with process, so as to give the court jurisdiction of his person, does not waive the obligation or confer jurisdiction by answering over and going to trial on the merits after he has ineffectually objected to the jurisdiction and his objection has been overruled. Harkness v. Hyde, 98 U. S. 476 (1878); Steamship Co. v. Tugman, 106 U. S. 118 (1882); Walling v. Beers, 120 Mass. 548 (1876). But there is some authority *contra*. McCullough v. Railway Mail Assn., 225 Pa. 118 (1909). See note to Corbett v. Casualty Association, 16 L. R. A. (N. S.) 177 (1908).

It may safely be stated, therefore, that both authority and logic support the view taken by the court in *Harris* v. *Taylor,* that where a statute of this character is in operation such conditional appearance is to be considered a voluntary appearance and submission to the jurisdiction of the court.

L. W.

CONSTITURIONAL LAW—AN ARGUMENT TO SUPPORT THE CONSTITUTIONALITY OF THE WEBB-KENYON ACT—The Webb-Kenyon Act of 1913[1] provides in substance that it shall be unlawful to transport into any state intoxicating liquor which is intended by any person interested therein to be received, sold or in any manner used, either in the original package or otherwise, in violation of any law of the state into which it is shipped. Any discussion concerning the constitutionality of this act must of necessity have for a background its predecessor, the Wilson Act of 1890,[2] and the case *In re Rahrer,*[3] in which the constitutionality of the latter act was upheld. An Iowa statute prohibiting the sale of liquors, except for medicinal purposes, had been held unconstitutional as applied to liquor brought from other states and sold in the original packages.[4] The inability on the part of the states to control the sale of liquor in this form was removed by the Wilson Act, which made liquor transported into any state, upon its arrival in such state, subject to the operation of the laws of that state enacted in the exercise of its police powers, to the same extent as though produced in that state, and regardless of whether it still remained in its original package. The act was held not to constitute a delegation of power to the states and was declared constitutional.

It is obvious, at the beginning, that the objection to the validity of the state statute in *Leisy* v. *Hardin*[5] cannot have been a constitutional one, since had it violated the Constitution of the United States, Congress could not later, by its assent, give a similar state act validity, which would be, in effect, an alteration of the Constitution by an act of Congress. The alternative is that the former statute was in conflict with the assumed will of Congress, which objection was removed by the Wilson Act.

The power of Congress to provide that an object of interstate commerce shall be divested of its interstate character at a point earlier than it otherwise would be is considered in *In re Rahrer* and the right affirmed. It would seem, however, that the case should

[1] Act Mar. 1, 1913, c. 90, 37 Stat. 699 [U. S. Comp. St. 1913 § 8739].
[2] Act Aug. 8, 1890, c. 728, 26 Stat. 313 [U. S. Comp. St. 1901, p. 3177].
[3] 140 U. S. 545 (1890).
[4] Leisy v. Hardin, 135 U. S. 100 (1890).
[5] *Supra,* note 4.